

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CURTIS SIMMONS ,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, et al.,	:	
	:	
Defendants.	:	NO. 99-4204

Reed, S.J.

January 4 , 2001

M E M O R A N D U M

At the conclusion of a non-jury trial in this civil rights action, this Court entered judgment in favor of the plaintiff for \$20,000. Plaintiff now moves for an award of attorneys' fees pursuant to 42 U.S.C. § 1988 (Document No. 23), and defendant has not responded to the motion. For the following reasons, plaintiff's petition for attorneys' fees and costs will be granted.

The statutory authority for awarding attorney's fees in § 1983 cases is set forth in 42 U.S.C. § 1988 (b). The pertinent portion of § 1988 provides

(b) **Attorney's fees** In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

42 U.S.C. § 1988 (b). In order to recover an award of attorney's fees under 42 U.S.C. §§ 1988, a party must demonstrate that: (1) it prevailed, (2) the hourly rate upon which the request is based is reasonable, and (3) the hours expended were reasonable. See Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S. Ct. 1333 (1983).

There is no dispute that plaintiff was the prevailing party in this case; this Court found in

favor of plaintiff and awarded substantial damages. Thus, the only question is whether the requested fees and costs are reasonable. The party seeking attorney's fees has the burden of proving that its request is reasonable. See Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990).¹ The district court should exclude hours that are not reasonably expended. See Hensley, 461 U.S. at 434; Rode, 892 F.2d at 1183. Hours are not reasonably expended if they are excessive, redundant or unnecessary. See id. The starting point for determining the amount of reasonable attorney's fees is “the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate,” or the “lodestar.” Hensley, 461 U.S. at 434.

Counsel for plaintiff attached billing records that describe the efforts of plaintiff's counsel in this case. The billing records break down the activities of plaintiff's counsel in detail and show the amount of time spent by counsel on communicating with his client, discovery, and trial preparation. I have reviewed these records carefully and conclude that the amount of time spent in preparation for this trial -- less than 100 hours over a three-year period -- is consistent with the amount of time a reasonable lawyer would spend in preparing for a trial of this nature. The individual descriptions of the activities of counsel reflect reasonable efforts by plaintiff's counsel to settle and try the case. I see no evidence of unnecessary, excessive or redundant efforts in the billing records, and no indication that the hours reflected there were not reasonably expended.

Likewise the hourly rates charged by plaintiff's counsel appear to be reasonable. Lead trial counsel, Michael A. Etkin, charges a rate of \$200 an hour, which appears to this court to be a reasonable fee. Plaintiff also seeks attorneys' fees for a minimal amount of work performed by

¹ While defendant has lodged no objection to the reasonableness of plaintiff's fees, the Court has an independent duty under § 1988 to assess the reasonableness of the fees sought by plaintiff.

attorneys who assisted in the case, each of whom bill at a rate of \$100 per hour or less.

Accordingly, the Court will award the counsel fees requested by plaintiff calculated in in the following manner:

Michael A Etkin	86.80 hours at \$200 per hour	\$ 17,360
Natalie Featherman	4.5 hours at \$100 per hour	\$ 450
Jennifer A Etkin	6.5 hours at \$50 per hour	\$ 325
Marc J Frumer	.25 hours at \$100 per hour	\$ 25
<hr/> Total		\$18,160

Plaintiff also submits an affidavit of costs, which lists seven items for which he seeks reimbursement. These items include filing fees, expert witness fees, and deposition transcript, and the amount requested for each item appears reasonable. I conclude that plaintiff's submitted costs are reasonable, and therefore, plaintiff will be awarded costs in the amount of \$1,112.10.

An appropriate Order follows.

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ORDER

AND NOW this 4th day of January, 2001, upon consideration of the petition of plaintiff Curtis Simmons for counsel fees pursuant to 42 U.S.C. § 1988 (Document No. 23), and having concluded, for the reasons set forth in the foregoing memorandum, that plaintiff is the prevailing party in this action and that plaintiff's requested fees and costs are reasonable, **IT IS HEREBY ORDERED** that plaintiff's request for attorneys' fees and costs is **GRANTED**, and plaintiff is awarded attorneys' fees and costs in the amount of \$19,172.10.

IT IS FURTHER ORDERED that the defendant City of Philadelphia shall pay to Frumer & Etkin, Esquires, the sum of \$19,172.10 no later than February 6, 2001.

LOWELL A. REED, JR., S.J.